## LAW OFFICES OF RAHUL WANCHOO

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# UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

AGROFAIR BENELUX B.V., and JEAN VERHEYEN NV, AEGON SCHADEVERZ. N.V, GENERALI SCHADEVERZ. MIJ. N.V AND ALLIANZ VERSICHERUNGS AG as subrogated underwriters,

Plaintiffs,

- Against -

M/V CHIQUITA DEUTSCHLAND, its engines, machinery, tackle etc.,

#### <u>in rem</u>

- and against -

GREAT WHITE FLEET (EUROPE) LTD., and DEUTSCHLAND SHIPPING CORP.,

#### <u>in personam</u>

Defendants.

29 CW 8013



**ECF CASE** 

09 CIV ( )

**VERIFIED COMPLAINT** 

Plaintiffs, Agrofair Benelux B.V., Jean Verheyen NV, Aegon Schadeverz. N.V, Generali Schadeverz. Mij. N.V and Allianz Versicherungs AG by their attorneys, Law Offices of Rahul Wanchoo, allege on information and belief as follows:

- 1. This is an action within the admiralty and maritime jurisdiction of this Honorable Court pursuant to 28 U.S.C. §1333, as hereinafter more fully appears, and is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure.
- 2. At all material times Plaintiff, Agrofair Benelux B.V., ("Agrofair") was and is a foreign corporation organized and existing under the laws of The Netherlands, with an office and place of business in Koopliedenweg 10, 2991, LN Barendrecht, The Netherlands, and was the consignee and owner of the shipment under a Bill of Lading No. 749122 dated December 7, 2007 ("Bill of Lading").
- At all material times Plaintiffs, Jean Verheyen N.V., Aegon Schadeverz. N.V, 3. Generali Schadeverz. Mij. N.V and Allianz Versicherungs AG were and are foreign corporations organized and existing under the laws of foreign countries, and are the subrogated underwriters of the cargo under the aforementioned Bill of Lading.
- 4. At all material times Defendant, Great White Fleet (Europe) Ltd. ("GWF") was and is a corporation organized and existing under the laws of the Bermuda with an office and place of business in 7, Reid Street, 109 Hamilton HM JX Bermuda, and at all material times was and now is engaged in the business as a common carrier of merchandise by water for hire and owned, chartered, managed and/or otherwise controlled the M.V. CHIQUITA DEUTSCHLAND ("Vessel") as a general vessel engaged in the common carriage of merchandise by water for hire between among others, the ports of Santa Marta, Columbia to Antwerp, Belgium.
- 5. At all material times Defendant, Deutschland Shipping Corporation, was and is a foreign corporation and was the registered owner of the Vessel.
- 6. On or about December 7, 2007, two 40 feet reefer containers consisting of 1920 boxes of fresh bananas were shipped by C.I. La Samaria S.A., as shipper, and delivered to GWF and the aforementioned Vessel as common carriers and/or bailees, from Santa Marta, Columbia,

shipped in container No. GESU 939445-0 and GESU 936303-8, then being in good order and condition, the Defendants then and there accepted the said shipment so shipped and delivered to them, and in consideration of certain agreed freight charges thereupon paid or agreed to be paid, agreed to transport and carry the said shipment to Antwerp, Belgium, and there deliver same in like good order and condition as when shipped, delivered to and received by them, to Plaintiff Agrofair, as the consignee, all in accordance with the Bill of Lading. A true and correct copy of the Bill of Lading is annexed hereto as **Exhibit A**.

- 7. Thereafter, the said Vessel arrived at the port of Antwerp, where Defendants failed to make delivery of the shipment in good order and condition, the bananas being no longer fit for sale and considered a total loss, all in violation of the Defendants' obligations and duties as common carriers of merchandise by water for hire.
- 8. The damages to said shipment as aforesaid were caused by the breach of contract of carriage and/or breach of contract of bailment and/or the negligence of the Defendants, jointly and severally, in the receipt, handling, loading, stowage, carriage, custody, care and discharge of the subject shipment.
- 9. Plaintiffs have performed all obligations which they were required to perform with respect to the subject shipment.
- As per the terms of the Bill of Lading, all claims against the Defendants must be brought before the United Stated District Court, Southern District of New York in accordance with the laws of the United States.
- 11. By reason of the foregoing premises, Plaintiffs have sustained damages, as nearly as the same can now be estimated, no part of which has been paid although duly demanded, in the sum of \$50,290.85.

WHEREFORE, Plaintiffs pray that:

1. Process in due form of law may issue against the Defendants, citing it to appear and answer all and singular matters aforesaid;

2. That if Defendants cannot be found within this District then all their property within this District be attached in the sum of \$50,290.85, with interest thereon and costs, the sum sued for in this complaint.

3. Judgment be entered in favor of Plaintiffs against Defendants Great White Fleet (Europe) Ltd., and Deutschland Shipping Corporation, and against Defendant M.V. CHIQUITA DEUTSCHLAND, her engines, tackles, etc., jointly and severally, on the cause of action for the amount of Plaintiffs' damages, together with interest and costs and the disbursements of this action; and

- 4. That process in due form of law according to the practice of this Court in causes of admiralty and maritime claims may issue against the said Vessel, its engines, tackles, etc., and that all persons having or claiming any interest therein be cited to appear and answer under oath, all and singular the matters aforesaid, and that this Court will be pleased to pronounce judgment in favor of Plaintiffs for their damages as aforesaid, with interest, costs and disbursements, and that the said Vessel may be condemned and sold to pay therefore; and
- 5. That this Court will grant to Plaintiffs such other and further relief as may be just and proper.

Dated: New York, New York September 18, 2009

LAW OFFICES OF RAHUL WANCHOO Attorneys for Plaintiffs

By:

Rahul Wanchoo (RW-8725)

### <u>VERIFICATION</u>

STATE OF NEW JERSEY)

SS.

## COUNTY OF BERGEN )

- I, Rahul Wanchoo, being duly sworn, deposes and says:
- I am an attorney at law and a member of the firm of Law Offices of Rahul Wanchoo, attorneys for Plaintiff.
- 2. I have read the foregoing Verified Complaint and know the contents thereof and the same are true to the best of my knowledge, information and belief.
- 3. I believe the matters to be true based on documents and information obtained from employees and representatives of the Plaintiff through its underwriters and attorneys. The reason that this verification is made by deponent and not by the Plaintiff is because Plaintiff is a foreign corporation, whose officers are not in this district, and whose verification cannot be obtained within the time constraints presented by the circumstances of this case.

RAHUL WAN

Sworn to and subscribed to before me this 18 September, 2009.

Notary Public
HICKSON P. KORE
ID # 2377209
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 8/26/2013

Case 1:09-cv-08013-CM

Document 1

Filed 09/18/2009

Page 6 of

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On Baran of Carrier GREAT WHITE FLEET (ELIROPE) LTD. Directly or Through the following agent:

IN ACCEPTING THIS BILL OF LADING. The Shipper, Consigner, helder hereof and the owners of the goods (herein collectively the "Merchant") agree, as if signed by each of them, to be bound by all stipulations, exceptions and conditions stated herein whether written, printed, stamped or incorporated on the lace and back hereof, which shall povern the relations whatsoever that may be between the Merchant and Carrier, its agents, contractors, employees, marter and Vessel in every contingency occurring and whether Carrier, be acting as such or balles.

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7 STOWAGE IN CONTAINERS BY MERCHANT I be Machen deans the Septem to the Contains the Container the C the flastic duty in respect to secure the Supremi within the Continue, and the Contro shall not be bath to least of or damage to the Styrman rocking of styring coeffecting or tables in properly package, slow or secure the Dispress in the Container, The Marchant or Machines again shall proporly soil confidences leaded by thom. The Mordisest, or its against shall condular issued and other containers belone copyling them to insure their subtriefly for its poods. Acceptance and packing of the contentes and being take exclange that the conteness word sound, observero autaino for uso and shall retine Center of responsibility for any diameter to goods control resulting from the condition of the centerior used. By debianing the Contenents the Contex, the Merchant warrants that the Dispress as highest cells and contains, it for the secont, of even weight distribution, and otherwise properly perhapsed, standard secured in the Contents, and that the Company is sound that sequently, Notwittelanding the bagging, the Carino at any time may, but is under no obtigation to. issued to Shinron and it, in the Centr's sole given, the Shinron's interprety packaged; allowed a secured in anytospect, the Cornor may, reject or discharge the Shiemant or any pail therest at the posterior period cony the remarkes to disclination, require the Marchest to measure architement and organized and a consideration of the sound of the sound of the Marchest and American and American States of the Marchest and American States of the Marchest and urdativing color supervent any of the foregoing acts, the Contra shafter acting as agont to the Manchant, all tink, loss, cost, expanse and a staty in correction therewere stating social trip Machanille, and the Caniar shall not be responsible to the condition and/or accurry in the court of the Strongol

8 PERISHABLE SHIPMENT DELIVERED TO CARRIER WITHOUT CONTAINER, REPRIGERATION 1 4 DOMESTIC SEC. ment appearing greater lear year alluse or clanatic consulting is clashword for the Contained processed or sourced in a management Contained, also sola responsibility of this Carrier and Latio structure Structure in a restpond companion for into a restponded Container and to agrand of the spritation at an baba value of the less and anian structor of the exercises in action of states anished to promote the spritary of the spritarion of Contex shall have no tability for succlade and/or other demage to the Shapman J., within a reasonable time date companion of slowage, and obsure of the compariment or Continue, the temperature is markle on to valid this or minus 5 degrees l'abrained of the Machinets remotive stilled on the cities select as Divoluting, in movement and the Carrier be required to marker a temporating of besitten

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